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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,590	12/11/2003	Harvey Stanley Benson	LOT494/4-002US	8219
22892	7590	10/23/2006		
VINSON & ELKINS L.L.P. 1001 FANNIN STREET 2300 FIRST CITY TOWER HOUSTON, TX 77002-6760			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,590

Applicant(s)

BENSON, HARVEY STANLEY

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed July 24, 2006, with respect to the rejection(s) of claim(s) 1-11 under 35 U.S.C. 102 have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-8, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Wada et al (U.S. Patent No. 6,863,664).

With respect to **Claims 1,8**: Wada teaches an absorbent article, said article being placeable between the body of a user and undergarments worn by the user, said article comprising a liquid pervious top sheet 11 having an upper surface for engaging at least a portion of the body of the user, a liquid impervious bottom sheet 12 for protecting the undergarments of the user,

an absorbent core provided between said top sheet and said bottom sheet, and a supplemental member 20 defined by a slit 4 cut through said upper surface of said top sheet and to a preselected depth into said absorbent core (see Fig. 1). Since applicant has not provided a concise definition of "define" in the disclosure, Examiner is applying the definition of "define" according to the Compact Oxford Dictionary, i.e. "mark out the limits or outline of". The supplemental member 20 has a removed end capable of movement between a retracted position and a projected position wherein said supplemental member 20 extends at least partly above said top sheet of said article, as seen in Fig. 1. (Col. 3, lines 1-5, 15-20, 25-27)

With respect to **Claim 2**: The supplemental member 20 is located in a central portion of said article, as can be seen in Fig. 1.

With respect to **Claim 4**: The absorbent core comprises a first section 21 (i.e. the absorbing portion of tampon 20) and a second section 13, said second section located substantially beneath said supplemental member when in the projected position. (Col. 4, lines 12-25)

With respect to **Claim 5**: The second section 13 comprises an absorbent material comprised of a laminate of airlaid pulp, which is capable of (a) compression when said supplemental member is in a retracted position and (b) expansion when said supplemental member is in a projected position. (Col. 5, lines 13-16)

With respect to **Claim 6**: As can be seen in Fig. 1, supplemental member 20 comprises a substantially cylindrical configuration.

With respect to **Claim 7**: The supplemental member 20 also comprises a substantially "u"-shaped configuration in that a longitudinal cross-section of member 20 reveals such a configuration.

With respect to **Claim 10**: The supplemental member 20 is intended for insertion into the body of a user when in a projected position. (Col. 4, lines 17-20)

With respect to **Claim 11**: The supplemental member 20 is a tampon and is therefore shaped for insertion into the body of a user.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al ('664) in view of Brown (U.S. Patent No. 6,059,763).

With respect to **Claim 3**: Wada does not teach an adhesive member for removably attaching said bottom sheet 12 to the undergarments of the user. Brown teaches an absorbent pad and tampon combination wherein the base of the pad 12 has an adhesive strip 25 disposed thereon for securing the pad 12 with tampon to a user's undergarment. Since Brown teaches that the tampon is intended to remain in place once inserted in an opening of a user and this retained position of the tampon is achieved by the securement of the device to a user's undergarment, it would be obvious to one of ordinary skill in the art to supply the bottom sheet taught by Wada

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with an adhesive member for removably attaching said bottom sheet to the undergarments of a user as taught by Brown. ('763, Col. 5, lines 25-28)

With respect to **Claim 9**: Wada teaches that the supplemental member 20 is hingeably attached to the article insofar as the tampon is manipulated between a protracted and retracted position by pulling string 22 and clamping the string in place by clamping sheet 3. Brown teaches a tampon that is hingeably attached to a topsheet 12 of an absorbent article 10 via a perforation line 18 to allow separation and independent use of the tampon if desired (Col. 4, lines 40-45). Since the supplemental member of Wada is capable of being preattached to the pad 2, i.e. the pad is manufactured and sold with a digital tampon in place as the supplemental member (which digital tampon is taught by Wada for member 20 (Col. 4, lines 15,16)), it would be obvious to one of ordinary skill in the art to modify the supplemental member 20 taught by Wada so as to be hingeably attached by perforation as taught by Brown for removability and flexibility for positioning by a user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH
October 16, 2006


JACQUELINE STEPHENS
PRIMARY EXAMINER